

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
AT SEATTLE

COUNTRY PREFERRED INSURANCE
COMPANY, an Illinois corporation,

Plaintiff,

vs.

ROBERT HURLESS and HEATHER
HURLESS, husband and wife, and the marital
community composed thereof;

Defendants.

Cause No.

**COMPLAINT FOR DECLARATORY
RELIEF**

COMES NOW Plaintiff Country Preferred Insurance Company (“Country”) and for its
Complaint alleges as follows:

I. NATURE OF ACTION

Pursuant to 28 U.S.C. § 2201 and other applicable law, Country seeks a judgment
declaring that it acted reasonably and in good faith, that it did not violate the Washington
Insurance Fair Conduct Act, RCW 48.30.015 (“IFCA”), that it did not violate the Washington
Consumer Protection Act, RCW 19.86 (“CPA”), and that it owes no further contractual or
extra-contractual amounts to defendants with respect to an underinsured motorist (“UIM”)

COMPLAINT FOR DECLARATORY RELIEF – 1
USDC WD WA/SEA CAUSE NO. _____

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1 claim asserted by defendants under an insurance policy issued by Country to defendants.
2 Country further seeks a declaration that damages presently claimed by defendants under RCW
3 48.30.015 are either unavailable pursuant to the terms of that statute or that, if such damages
4 were available under RCW 48.30.015, the statute so interpreted would violate the United States
5 Constitution.

6 **II. PARTIES**

7 1. Plaintiff Country is an Illinois corporation having its principal place of business
8 in Bloomington, Illinois.

9 2. On information and belief, defendants Robert Hurless and Heather Hurless
10 (individually and collectively, "Hurless") are husband and wife and reside in Stanwood,
11 Snohomish County, Washington.

12 **III. JURISDICTION AND VENUE**

13 3. Subject Matter Jurisdiction. This Court has subject matter jurisdiction over this
14 controversy pursuant to 28 U.S.C. § 1332(a)(1) because this controversy is between citizens of
15 different states and because the matter in controversy exceeds, exclusive of interest and costs,
16 the sum specified by 28 U.S.C. § 1332(a).

17 4. Personal Jurisdiction. This Court has personal jurisdiction over defendants
18 who, on information and belief, reside in Stanwood, Washington.

19 **IV. FACTUAL ALLEGATIONS**

20 5. Country issued auto liability insurance to Hurless under Policy No. PA
21 4464628, which was in effect from April 28, 2009 to October 28, 2009 (the "Policy"). The
22 Policy included Underinsured Motorist ("UIM") coverage with limits of \$250,000 per person
23 and "personal injury protection" coverage ("PIP") with limits of \$10,000 per person.

1 6. On or about September 8, 2009, defendant Robert Hurless was involved in an
2 auto collision with another vehicle (the "Accident").

3 7. On information and belief, Hurless incurred medical expense of less than
4 \$13,500 related to the Accident, and the driver of the other vehicle in the Accident had liability
5 insurance limits of \$100,000.

6 8. Country paid \$20,000 under the Policy's PIP coverage for Hurless's medical
7 expenses and wage loss.

8 9. On information and belief, when Hurless first submitted a policy limits demand
9 to the liability insurer for the other driver, the liability insurer acknowledged coverage but
10 declined to pay its policy limit of \$100,000 at that time because it did not value damages that
11 Hurless was legally entitled to recover from the at-fault driver as high as \$100,000.

12 10. Country did not deny or dispute the existence of UIM coverage for the
13 Accident, but it did contest the amount of damages claimed by Hurless based on, *inter alia*, the
14 evaluation of defense counsel retained for the defense of the UIM claim, who valued the case at
15 less than \$350,000.

16 11. Hurless demanded arbitration under the Policy's UIM coverage, and Hurless's
17 UIM claim was arbitrated in November 2010.

18 12. As late as the opening day of the arbitration hearing, Hurless offered to settle
19 the UIM claim against Country for Country's UIM policy limit of \$250,000. Country declined
20 that demand based on, *inter alia*, the evaluation of defense counsel and evidence presented by
21 Hurless up to that point.

22 13. In the rebuttal portion of the mediation, Hurless for the first time presented the
23 opinion of an expert regarding wage loss, which report and opinion had never previously been

1 provided to Country despite long-standing discovery requests from Country to Hurless for all
2 damage calculations and opinions of expert witnesses.

3 14. The arbitrator entered an arbitration award in the amount of \$920,694 to Robert
4 Hurless and & \$75,000 as loss of consortium damages to Heather Hurless, totaling \$995,694.

5 15. Shortly after the arbitrator entered his award, Country paid its full \$250,000
6 UIM limit to Hurless.

7 16. Hurless thereafter notified Country of their intent to assert a claim against
8 Country for bad faith and violation of IFCA and demanded multi-millions of dollars in
9 damages from Country. Among other things, Hurless claimed they were entitled to include the
10 portion of the arbitration award that exceeded Country's UIM limits as "actual damages"
11 recoverable under RCW 48.30.015(1), and that said amount would be subject to trebling under
12 RCW 48.30.015(2). Hurless also claimed additional damages from Country that were not
13 raised in the Arbitration, including alleged lost future income beyond what was claimed at the
14 Arbitration.

15 17. On or about December 30, 2010, Hurless sent a Notice of Claim to the
16 Washington Insurance Commissioner stating Hurless's intent to file suit against Country.
17 Attached hereto as Exhibit A is a copy of the cover letter received by Country, addressed to the
18 Washington Insurance Commissioner.

19 **V. CAUSE OF ACTION FOR DECLARATORY RELIEF**

20 18. Country realleges the preceding paragraphs as though fully set forth herein.

21 19. An actual controversy within the jurisdiction of this Court exists between
22 Country and Hurless regarding the handling of Hurless's UIM claim and the damages that
23

1 could be recovered under IFCA and other law, consistent with the facts of this case and
2 applicable law, including the United States Constitution.

3 20. Country is entitled to a declaration that it acted reasonably and in good faith
4 with respect to Hurless's UIM claim, that it did not violate IFCA or the CPA in its handling of
5 this claim, and that it owes no further contractual or extra-contractual amounts to Hurless under
6 the Policy or Washington law.

7 21. Country is also entitled to a declaration that the damages claimed by Hurless,
8 including, without limitation, the amount of the arbitration award in excess of Country's UIM
9 limits and/or trebling of that amount under IFCA, are contrary to law and would violate, *inter*
10 *alia*, the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

11 **V. PRAYER FOR RELIEF**

12 WHEREFORE, plaintiff Country prays for relief as follows:

13 1. For a declaration that Country acted reasonably and in good faith with respect to
14 Hurless's claim;

15 2. For a declaration that Country did not violate IFCA or the CPA in its handling
16 of the Hurless's claim;

17 3. For a declaration that Country owes no further contractual or extra-contractual
18 amounts to defendants;

19 4. For a declaration that Hurless cannot recover, as damages from Country, the
20 amount of the arbitration award that exceeds Country's UIM limits nor treble that amount
21 under IFCA;

Country are based on an interpretation of IFCA that would, if accepted, violate the Due Process

Clause of the Fourteenth Amendment to the United States Constitution.

6. For attorney fees and costs pursuant to statute, contract or equity; and

7. For such other and further relief as this Court deems just and equitable.

DATED this 15th day of August, 2011.

SOHA & LANG, P.S.

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EXHIBIT A

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December 30, 2010

Office of the Insurance Commissioner
Insurance Fair Conduct Act Claim Notification
P. O. Box 40255
Olympia, WA 98504-0255
Attn: Christine M. Tribe, paralegal

WRO Claims
JAN 03 2011

RE: Claim Against Country Preferred Insurance Company
Insurance Fair Conduct Act, RCW Title 48.30

JAN 03 2011
DCB

Dear Insurance Commissioner,


Enclosed is a Notice of Claim & Complaint against Country Preferred Insurance Company, pursuant to the provisions of the Insurance Fair Conduct Act, RCW 48.30.

This claim is filed on the behalf of Country Preferred's policyholders, Robert and Heather Hurless, policy # PA6A4464628. The purpose of this notice and claim is to notify Country Preferred that a lawsuit will be filed against them.

A copy of this notice has been sent to Country Preferred Insurance Company and it's claims department.

Please appropriately file and give notice to Country Mutual. Thank you.

Very truly yours,


Dwayne A. Richards
WSBA #2556

Copy to: Country Preferred Insurance Company Home Office
Country Preferred Regional Claim Attorney, Don Bevins ✓
Country Financial and Investment Services